

BRISTOL BAY NATIVE CORPORATION

IBLA 99-199

Decided September 28, 2000

Appeal from a decision of the Alaska State Office, Bureau of Land Management, finding Native allotment application AA-53453 to have been legislatively approved and rejecting in part cemetery site/historical place regional selection application AA-10667.

Affirmed.

1. Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Native Allotments--Alaska Native Claims Settlement Act: Conveyances: Cemetery Sites and Historical Places

Legislative approval of a Native allotment application pursuant to section 905(a) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1643(a) (1994), precludes any inquiry into whether the Native's use and occupancy of the land was sufficient to entitle the Native to approval of the allotment, and BLM properly rejects a regional selection application for a cemetery site/historical place to the extent it includes land within a legislatively approved Native allotment application.

APPEARANCES: Paul C. Roehl, Land Manager, Bristol Bay Native Corporation, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Bristol Bay Native Corporation (Bristol Bay) has appealed the December 22, 1998, decision of the Alaska State Office, Bureau of Land Management (BLM), finding Mary A. Lockuk's Native allotment application (AA-53453) to have been legislatively approved and rejecting in part its conflicting regional selection application for a cemetery site/historical place (AA-10667).

On December 16, 1975, Bristol Bay filed a regional selection application for a cemetery site/historical place (Nunacualler) pursuant to section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA),

43 U.S.C. § 1613(h)(1) (1994). As amended, Nunacualler, a Native spring settlement used in late historic times as a base camp for hunting sea mammals and the site of two Native burials, embraces approximately 12.2 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 4, T. 16 S., R. 63 W., Seward Meridian, Alaska, within the Togiak National Wildlife Refuge. On June 28, 1990, the Acting Area Director, Juneau Area Office, Bureau of Indian Affairs (BIA), issued a certificate of eligibility to Bristol Bay for Nunacualler as an historical place and cemetery site.

On April 6, 1984, 1/ BIA filed Native allotment application AA-53453 on behalf of Lockuk pursuant to the Native Allotment Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed effective December 18, 1971, by section 18(a) of ANCSA, 43 U.S.C. § 1617(a) (1994), subject to pending applications. 2/ Lockuk claimed use and occupancy of approximately 160 acres within the NW $\frac{1}{4}$ sec. 4 and the E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 5, T. 16 S., R. 63 W., Seward Meridian, Alaska, commencing in May 1960. 3/ She stated that she had occupied the land from May through August each year from 1960 through 1968 as a summer fish camp and had used the land for hunting seal and ptarmigan and for berry picking. Although she ceased using the land as a fish camp after 1968, she asserted that she had continued to utilize the land for other subsistence activities.

Thereafter, BLM surveyed Lockuk's allotment in 1998, after resolution of conflicts between the location of her allotment and two other Native allotments. The official plat of survey, filed on July 6, 1998, describes the allotment as lot 7, U.S. Survey No. 10561, Alaska, situated in secs. 4 and 5, T. 16 S., R. 63 W., Seward Meridian, containing 159.96 acres.

In its December 22, 1998, decision, BLM found that Lockuk's Native allotment application had been legislatively approved, effective June 1, 1981, pursuant to section 905(a) of the Alaska National Interest Lands Conservation Act (ANILCA), as amended, 43 U.S.C. § 1634(a) (1994), pending confirmation of the location of the claimed lands. Hence, BLM rejected Bristol Bay's amended regional selection application for Nunacualler to the extent it included lands within Lockuk's legislatively approved Native allotment application.

On appeal, Bristol Bay argues that to be granted a Native allotment, an applicant must show substantially continuous use and occupancy of the land at least potentially exclusive of others. Although Lockuk claims

1/ The BLM decision erroneously states that the application was filed on Nov. 2, 1982.

2/ Lockuk's application, which she signed and submitted to BIA in 1971, was deemed to be timely filed in accordance with the settlement reached in Barr v. United States, A76-160 Civil (D. Alaska Aug. 2, 1982).

3/ Lockuk's use and occupancy of the land predates the 1980 creation of the Togiak National Wildlife Refuge. See PLO 5703 (Feb. 11, 1980).

that her use of the parcel began in May 1960, Bristol Bay asserts that the Natives who communally used the land in the late 1800's predate Lockuk's commencement of use and occupancy and that disregarding this documented historical use in favor of a relative newcomer "flies in the face of reason." (Notice of Appeal/Statement of Reasons at 1.) Bristol Bay requests that, at the very least, the 12.2-acre historical Nunacualler site be excluded from Lockuk's Native allotment application.

[1] The legislative approval of Lockuk's Native allotment application pursuant to section 905(a) of ANILCA, 43 U.S.C. § 1634(a) (1994), precludes any inquiry into whether her use and occupancy of the land sufficed to entitle her to approval of the allotment. See, e.g., State of Alaska Department of Transportation and Public Facilities, 124 IBLA 386, 390 (1992); State of Alaska, 110 IBLA 224, 228 (1989). Thus, the question of whether Lockuk has shown substantially continuous use and occupancy of the land at least potentially exclusive of others is not an issue in this appeal. In any event, the fact that Natives communally used the land in the late 1800's does not undermine BLM's determination that Lockuk's allotment application was legislatively approved. Nor does the historical use of the land by Natives mandate approval of the regional selection for the Nunacualler site or the site's exclusion from the approved allotment since Lockuk's Native allotment appropriated the encompassed land and section 14(h) of ANCSA, 43 U.S.C. § 1613(h) (1994), limits the land subject to withdrawal for conveyance to regional corporations as cemetery sites and historical places to "unreserved and unappropriated" public lands. See Bering Straits Native Corp., 87 IBLA 96, 99 (1985).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

